

Serial No. 09/856,571

Att. Docket No. Mo 6341/LcA 33 270

REMARKS

Applicants respectfully request reconsideration and reexamination of the present application in light of the amendments and the remarks below.

Claims 1-24 are pending in this application. To expedite prosecution, Applicants have elected to cancel claims 4, 15, 18, 21, and 24.

The Examiner has withdrawn the rejection of claims 1-5 and 12 over Bartel (Himmeler) (Paper No. 112004, page 2).

Claim Objections

The Examiner has stated that claims 4, 15, and 18 are substantial duplicates of claims 1, 14, and 9, respectively (Paper No. 112004, page 2). To expedite prosecution, Applicants have elected to cancel claims 4, 15, and 18, and thereby obviating the objection of claims 4, 15, and 18.

The Examiner objected to claims 2 and 3 because of the following informalities:
Claim 2: a period is not present at the end of the claim on page 5, but present in line 4, page 4. Claim 3: a period is present at line 4 as well at the end of the claim (Paper No. 112004, pages 2-3). The appropriate corrections have been made.

The Examiner objected to claim 5 because of the following informalities:
In line 8, the compound (1S,6S)-2,8-diazabicyclo[4.3.0]nonane of the formula (III) is depicted with "(II)" (Paper No. 112004, page 3). The appropriate correction has been made.

It is submitted that Applicants have overcome the claim objections, and thus, the claims are allowable.

Rejection Under 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 4-24 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention (Paper No. 112004, pages 3-4). Applicants respectfully traverse this rejection.

To expedite prosecution, Applicants have elected to cancel claims 4, 15, 18, 21, and 24, and thereby obviating the rejection.

A. The Examiner stated that claims 4-8, and 12-15 are indefinite because it is unclear how the semihydrate of the CDCC is obtained when HCl is not mentioned being used in the process. The claims have been amended accordingly. That is, the claims only recite Hal as chlorine.

Serial No. 09/856,571

Atty. Docket No. Mo 6341/LeA 33-270

B. The Examiner stated that claims 10 and 18-21 are unclear because they are method claims that are improperly dependent upon a compound claim 1. Claim 1 is not a process claim where CDCC is formulated in claim 1 (Paper No. 112004, pages 3-4). The claims have been amended to recite the step of combining a compound of claim 1 with pharmaceutically acceptable auxiliaries and excipients.

C. The Examiner stated that claims 11, and 22-24 are indefinite because the host being treated for bacterial infection is not stated (Paper No. 112004, page 3). The claims have been amended to recite "human or animal." Support for the amendment may be found on page 9, lines 19-21 of the specification.

D. The Examiner stated that in claims 9, and 16-18, the term "customary" is indefinite. The claims have been amended to recite "pharmaceutically acceptable" auxiliaries and excipients.

It is thus submitted that the claims 5-14, 16, 17, 19, 20, 22, and 23 meet the requirements of 35 USC § 112, second paragraph, and reconsideration and withdrawal of the present rejection is respectfully requested.

Allowable Subject Matter

The Examiner has stated that claim 1 is allowable (Paper No. 112004, page 4).

CONCLUSION


For the foregoing reasons, Applicants submit that the claims are in condition for allowance and Applicants respectfully request reexamination of the present application, reconsideration and withdrawal of the present rejections and objections, and entry of the amendments. Should there be any further matter requiring consideration, Examiner Robinson is invited to contact the undersigned counsel.

If there are any further fees due in connection with the filing of the present reply, please charge the fees to undersigned's Deposit Account No. 13-3372. If a fee is required for an extension of time not accounted for, such an extension is requested and the fee should also be charged to undersigned's deposit account.

Respectfully submitted,

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